

WALCH LOGGING CO., INC., DANT & RUSSELL, INC.
v.
ACTING ASSISTANT AREA DIRECTOR (ECONOMIC DEVELOPMENT),
PORTLAND AREA OFFICE, BUREAU OF INDIAN AFFAIRS

IBIA 82-48-A

Decided December 22, 1983

Petitions for reconsideration of Board decision reported at 11 IBIA 85, 90 I.D. 88 (1983).

Petitions for reconsideration dismissed without vacation of original decision.

1. Rules of Practice: Appeals: Reconsideration

Under 43 CFR 4.314 and 4.315, a decision issued by the Board of Indian Appeals is final for the Department without further action. The filing of a petition for reconsideration is not required for finality.

APPEARANCES: Gina Guy, Esq., and Michael E. Draais, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Portland, Oregon, for appellee; Ronald T. Adams, Esq., Portland, Oregon, for appellants. Counsel to the Board: Kathryn A. Lynn.

OPINION BY ADMINISTRATIVE JUDGE MUSKRAT

On December 13, 1983, the Board of Indian Appeals (Board) received a joint motion to dismiss reconsideration of the Board's March 18, 1983, decision in this case, reported at 11 IBIA 85, 90 I.D. 88 (1983), on the grounds that a settlement agreement had been reached by the parties. Because of a pending bankruptcy proceeding, the settlement had been submitted to and approved by the U.S. Department of Justice and the U.S. Bankruptcy Court for Oregon in adversary proceeding No. 83-0086. The motion further seeks an order vacating the Board's original decision as to those issues raised in the April 12, 1983, motion for reconsideration filed by the Bureau of Indian Affairs (BIA, appellee).

After reviewing the proposed settlement, the Board approves the agreement and hereby dismisses both the petition for reconsideration filed by appellee on April 12, 1983, and the petition filed by appellants Walch Logging Co. and Dant & Russell on May 27, 1983.

[1] The Board declines, however, to vacate its March 18, 1983, decision. The motion to vacate is supported only by the assertion that because "these issues were resolved by the compromise settlement before being reconsidered by the Board, * * * the Board's March 18, 1983, decision was not a final administrative decision for the Department" (Motion at 2). This assertion is an incorrect interpretation of the Board's regulations. Under 43 CFR 4.314 and 4.315, a decision of the Board is final for the Department. A petition for reconsideration, which is an extraordinary remedy, is not required for the exhaustion of administrative remedies. Therefore, a Board decision is final unless and until a petition for reconsideration is filed and granted, and a decision altering the original decision is subsequently issued. In this case, although two petitions for reconsideration were granted, they were dismissed because of the settlement agreement reached by the parties. Although the original decision no longer controls the disposition of this case, it is still a final Departmental decision. 1/

The motion seeks to accomplish in the guise of a settlement agreement and by stipulation of the parties 2/ what the Board will only do through thorough reconsideration of a decision. The original decision in this case interpreted a contract. To the extent that BIA believes the decision may hamper enforcement of Indian timber contracts, it can be avoided simply by altering the contractual agreement between the parties, or by making any other arrangement whereby the facts of the new case distinguish it from those addressed in the Board's decision. Furthermore, the issues sought to be addressed through reconsideration may be raised again in an appropriate case.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the settlement agreement is approved and the petitions for reconsideration are dismissed without vacation of the Board's March 18, 1983, decision.

Jerry Muskrat
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Bernard V. Parrette
Chief Administrative Judge

1/ The Board is not aware of any case before the Department in which this precise issue was previously raised. However, the doctrine of finality of administrative action has long been recognized by the Department. See, e.g., Union Oil Co. of California, 71 I.D. 169 (1964), and cases cited therein.

2/ The settlement agreement provides in paragraph 5, page 5, that appellants "shall reasonably assist the BIA in obtaining a termination of the [Board] appeal that is satisfactory to the BIA. The Debtor [appellants] and the BIA agree that it is their intent that the BIA's determination of the most advantageous procedure for terminating the [Board] appeal shall be controlling * * *."